

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE REGULATION
ADMINISTRATION BOARD

IN THE MATTER OF:

R & A Restaurant Development
Company Georgetown, LLC, Fact Finding
t/a Five Guys Hearing
1335 Wisconsin Ave NW [Extended
Safekeeping]
Ret. Class CR
License #71127

Thursday,
May 15, 2014

Suite 400S
2000 14TH STREET, N.W.
Washington, D.C. 20009

The above-entitled matter convened at
2:43 p.m., before the District of Columbia
Alcoholic Beverage Regulation Administration
Board.

BEFORE:

RUTHANNE MILLER, Chairman
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

1 P-R-O-C-E-E-D-I-N-G-S

2 (2:43 p.m.)

3 CHAIRPERSON MILLER: Okay. We
4 have a fact finding hearing for Five Guys
5 located at 1335 Wisconsin Avenue Northwest,
6 License Number 71127. It involves a license
7 that has been in safekeeping for an extended
8 amount of time. The licensee is not here but
9 Mr. Gordy is here from ABRA.

10 Okay. When you're ready, if you
11 could introduce yourself for the record,
12 please?

13 MR. GORDY: Good afternoon. My
14 name is Sean Gordy, Licensing Manager for the
15 Alcohol and Beverage Regulation
16 Administration.

17 CHAIRPERSON MILLER: Okay. As the
18 licensee is not here, we're wondering if you
19 can give us some information about this
20 license that's been in extended safekeeping I
21 guess starting with how long it's been in
22 safekeeping and, then, you know, what facts

1 you know about it?

2 MR. GORDY: My understanding is
3 that the license has been in safekeeping since
4 approximately 2010 or thereabout. The
5 licensee was a franchisee of Five Guys and
6 which I understand they pulled away from
7 corporate.

8 And the person representing the
9 licensee or was the licensee, a Rona, placed
10 the license in safekeeping, has maintained the
11 license in safekeeping in that she's been
12 responsible for renewal fees, payments or
13 whatever was applicable.

14 Rona basically took care of and,
15 as of March 2013, the CR was renewed. The
16 license was renewed and that's pretty much
17 where we left it.

18 CHAIRPERSON MILLER: Who is the
19 licensee you're referring to?

20 MR. GORDY: The contact person was
21 an individual by the first name of Rona.

22 CHAIRPERSON MILLER: Verona?

1 MR. GORDY: Rona.

2 CHAIRPERSON MILLER: Rona.

3 MR. GORDY: R-O-N-A.

4 CHAIRPERSON MILLER: Okay. That's
5 the first name?

6 MR. GORDY: That's the first name
7 and, if I had the file, I would pull the email
8 address or her contact information. But she
9 had been the individual contact person that
10 had been responsible and, basically, advised
11 our licensing specialist that, as corporate
12 pulled away, they were going to hold the
13 license and wanted to hold the license in
14 safekeeping until at which point they would be
15 able to remove the license from safekeeping
16 and operate their own business.

17 CHAIRPERSON MILLER: So, was that
18 since 2010?

19 MR. GORDY: Yes, that was since
20 2010.

21 CHAIRPERSON MILLER: So, do you
22 know what they've been doing in three or four

1 years?

2 MR. GORDY: Other than renewing
3 the license at renewal and paying the
4 appropriate fees, no. They haven't been doing
5 anything with the license.

6 CHAIRPERSON MILLER: Do you know
7 whether they were contacted for this hearing?

8 MR. GORDY: No. I don't know if
9 they -- if -- Ms. Walker attempted contact I
10 know. We've contacted -- our licensing
11 specialists, reached out to all the licenses
12 in safekeeping for second/third-year payment
13 --

14 CHAIRPERSON MILLER: Right.

15 MR. GORDY: -- did that process
16 this past March and April, 2014.

17 CHAIRPERSON MILLER: Okay. Do you
18 know how she was reached out to?

19 MR. GORDY: Via email.

20 CHAIRPERSON MILLER: Via email?

21 MR. GORDY: That's been the
22 contact method.

1 CHAIRPERSON MILLER: Okay. So,
2 when was the last contact you had, you or your
3 licensing employees had with Rona?

4 MR. GORDY: Definitively, I
5 couldn't tell you, at this point.

6 CHAIRPERSON MILLER: Okay. And
7 you didn't get any response back from Rona
8 with respect to coming to this hearing?

9 MR. GORDY: No, ma'am.

10 CHAIRPERSON MILLER: But was there
11 express communication about the hearing?

12 MR. GORDY: Other than the letter
13 that would have been sent from adjudication,
14 that's the extent of communication.

15 CHAIRPERSON MILLER: Okay. So, to
16 your knowledge, there was a letter sent to
17 her?

18 MR. GORDY: Yes.

19 CHAIRPERSON MILLER: Okay. And to
20 your knowledge, there wasn't any response to
21 the letter?

22 MR. GORDY: No.

1 CHAIRPERSON MILLER: Okay. Other
2 members have questions? Mr. Alberti?

3 MEMBER ALBERTI: You probably
4 don't know the answer to this. What is she
5 waiting for? You probably don't know the
6 answer to this, Mr. Gordy, but for the LLC, do
7 we have from DCRA that they're in good
8 standing? I guess somebody would have done
9 that at renewal, right?

10 MR. GORDY: Right. Right. And
11 that would have been because the license was
12 renewed in March of 2013. So --

13 MEMBER ALBERTI: The reason I'm
14 asking is because, apparently, we haven't
15 heard from these people in quite some time
16 except to get their renewal fees.

17 MR. GORDY: Right. Right.

18 CHAIRPERSON MILLER: Was March
19 2013 the last time we had communication with
20 them?

21 MR. GORDY: In terms of renewal
22 and actually, physically having an exchange or

1 conversation, to my knowledge, yes, sir.

2 MEMBER ALBERTI: Okay. So, when's
3 the last time they requested extension of
4 safekeeping?

5 MR. GORDY: The last time the
6 license renewed.

7 MEMBER ALBERTI: When did they
8 actually make a request for this safekeeping,
9 do you know?

10 MR. GORDY: The original request
11 or an extension?

12 MEMBER ALBERTI: Extensions.

13 MR. GORDY: Extensions?

14 MEMBER ALBERTI: Yes.

15 MR. GORDY: I have no record of
16 when the last time they requested.

17 MEMBER ALBERTI: But it would be
18 in the file, correct?

19 MR. GORDY: Yes, sir.

20 MEMBER ALBERTI: All right. I
21 think we should take a look at their last
22 request for safekeeping. I'm not sure. And

1 I think the Board needs to take a look at
2 what's going on and what the law says and what
3 policy is. If someone pays the fees but
4 doesn't request extension of safekeeping, are
5 we obligated to keep it in safekeeping? I
6 mean they haven't made a request so --

7 CHAIRPERSON MILLER: This is a --

8 MEMBER ALBERTI: -- that's a big
9 question for me.

10 CHAIRPERSON MILLER: This is a
11 moratorium zone, correct?

12 MEMBER ALBERTI: I understand that
13 but the law is very complicated and, if I
14 don't have a request for safekeeping, how do
15 I know that they want it in safekeeping?

16 CHAIRPERSON MILLER: Is there --

17 MEMBER ALBERTI: You have to see
18 it not just one statute at a time. You have
19 to look at the regs as a whole. And I would
20 kind of like us to think about that with our
21 general counsel. So, I'm just posing a
22 question now. I don't have the answers.

1 CHAIRPERSON MILLER: Okay. I
2 would just like to request maybe if there
3 could be some effort to actually get in
4 contact with this individual. I don't know.
5 I don't know if that's possible. Maybe or it
6 may not be, if it's possible.

7 MEMBER RODRIGUEZ: What was that?
8 Sorry. Again?

9 CHAIRPERSON MILLER: Okay. Yes,
10 Mr. Rodriguez?

11 MEMBER RODRIGUEZ: So, am I to
12 understand that this license is in
13 safekeeping?

14 MR. GORDY: Yes.

15 CHAIRPERSON MILLER: Yes.

16 MEMBER RODRIGUEZ: Okay. Well,
17 consistent, then, with our policy to review
18 all the licenses that are in safekeeping, then
19 it behooves us to do everything we can to
20 conduct that process, whether they're here or
21 not. We need to look at the records and
22 determine, you know, where they're at.

1 CHAIRPERSON MILLER: Okay.

2 MEMBER ALBERTI: But we don't have
3 much to look at except whether they paid their
4 fees and whether they're current with their
5 DCRA licenses and when they request the
6 extension.

7 MEMBER RODRIGUEZ: Then we need to
8 call them in somehow.

9 CHAIRPERSON MILLER: Okay.

10 MEMBER RODRIGUEZ: We need to call
11 them in and have them appear before the Board.

12 MEMBER ALBERTI: And, if they
13 decline to come in, what do you do?

14 MEMBER RODRIGUEZ: Then, if
15 there's no interest, then we should put the
16 license away.

17 CHAIRPERSON MILLER: Okay. But
18 the thing is there is an interest, because
19 they've paid their fees. They've been paying
20 their fees, so there is an interest. But --

21 MEMBER RODRIGUEZ: Who paid the
22 fees? The somebody who paid the fees should

1 be contacted. Whoever paid the fees --

2 MEMBER ALBERTI: They did.

3 Mr. Gordy did contact whoever paid the fees.

4 MEMBER RODRIGUEZ: Did you,

5 Mr. Gordy? I'm sorry. Did you have direct

6 contact with who paid the fees?

7 CHAIRPERSON MILLER: No.

8 MR. GORDY: Yes. Well, via email,

9 we notified the licensee, particularly the

10 ones in safekeeping. Whenever renewal takes

11 place, we mail, because we know a lot of

12 establishments may have closed.

13 MEMBER RODRIGUEZ: Yes, sir.

14 MR. GORDY: Then, in addition to

15 the mailings, we will call them directly,

16 email, basically run down every avenue, in

17 terms of wanting contact, contact

18 methodologies to ensure that they get the

19 information that the license is in

20 safekeeping. You still are responsible for

21 renewing, paying, whatever the case may be.

22 My understanding is this

1 individual renewed the license in 2013, March,
2 where all Class C Restaurant Licenses are
3 renewed.

4 MEMBER RODRIGUEZ: So, there has
5 been contact, initially. And you're saying
6 that now there is no response, after second
7 contact?

8 MR. GORDY: Yes, sir. Our
9 licensing specialists worked with a
10 communication team to identify methods of
11 contact, alternative contact information, et
12 cetera to ensure we reached out or had
13 appropriate, viable information to contact
14 these licensees.

15 MEMBER RODRIGUEZ: Okay. Well, we
16 do need to somehow find a way to contact them
17 I guess.

18 CHAIRPERSON MILLER: Okay. Yes,
19 Mr. Short?

20 MEMBER SHORT: If it's in our
21 purview, what you would recommend the Board
22 do, because we know there is an interest in

1 the business community for these licenses,
2 correct?

3 MR. GORDY: Absolutely.

4 MEMBER SHORT: Do you have a
5 recommendation to the Board?

6 MR. GORDY: In actuality, the
7 licensee understands its license is in
8 safekeeping. It's in a protected status.
9 And, if the licensee isn't responsive to
10 anything, any responsibility to maintain, be
11 responsible for, provide feedback on this
12 license, then, you know, especially to
13 Mr. Alberti's point, if it's been a year or so
14 and they haven't even bothered to extend the
15 license or even apply to extend the license,
16 in my opinion, that license should be kept.

17 CHAIRPERSON MILLER: Is there a
18 legal obligation --

19 MEMBER SHORT: Thank you.

20 CHAIRPERSON MILLER: I'm sorry.

21 MEMBER SHORT: No. Thank you very
22 much for that response and I'll make a

1 recommendation after I hear from the Chair.

2 CHAIRPERSON MILLER: Okay. And I
3 know you're not general counsel for the
4 Agency. So, my only question is, and it just
5 could be on in general, is I'm not clear on
6 the law that there is an obligation for a
7 license in safekeeping now to request
8 extensions, in a moratorium zone. We're heard
9 this morning and we've talked about it that
10 licenses in moratorium zones are different.

11 MR. GORDY: Well, I --

12 CHAIRPERSON MILLER: So, that may
13 be why there may not be a request for an
14 extension.

15 MEMBER ALBERTI: And I don't know.
16 I don't know.

17 CHAIRPERSON MILLER: No.

18 MEMBER ALBERTI: I think that's an
19 unanswered question and that's why I posed it
20 as a question to a lawyer.

21 CHAIRPERSON MILLER: Right. Me,
22 too.

1 MEMBER ALBERTI: The lawyer will
2 just have to look at it. I'm not going to
3 speculate at all on what that means for us.
4 I will remind my fellow Board members that, in
5 this case, there is absolutely no legal
6 obligation for them to appear at this hearing.

7 We requested them to come for a
8 fact finding. They didn't come. There's
9 nothing. I know of no legal obligation on
10 their part to appear for this hearing. Maybe
11 someone else can inform me, but --

12 MEMBER SHORT: I think that's part
13 of our frustration. Can I just make a
14 recommendation, just for an idea for us to
15 discuss? Could we send a notice to the
16 licensee that cancellation's being considered?

17 CHAIRPERSON MILLER: I wouldn't
18 vote for that.

19 MEMBER ALBERTI: I wouldn't.

20 MR. GORDY: Not if it's illegal.

21 MEMBER SHORT: I didn't say take
22 it from them. I said consider.

1 MEMBER ALBERTI: No, I would not
2 do that.

3 CHAIRPERSON MILLER: I would not.

4 MEMBER ALBERTI: Unless we have
5 confirmed from our legal staff that it's a
6 real option.

7 MEMBER SHORT: Okay.

8 MEMBER ALBERTI: So, why are we
9 there? We don't know.

10 CHAIRPERSON MILLER: Okay.

11 MEMBER ALBERTI: What else can we
12 do today?

13 CHAIRPERSON MILLER: I think we've
14 gotten the information that we can get and
15 this was fact finding and that's --

16 MEMBER RODRIGUEZ: Madam Chair, a
17 point of information here. Now, when there is
18 an application that is submitted to this Board
19 by, you know, by a potential licensee and,
20 when that license is granted, I have to study
21 this I know, but shouldn't there be some kind
22 of caveat in the application that allows for

1 the Board to be in contact with any licensee,
2 when it feels it's necessary? They have legal
3 consequences?

4 MEMBER ALBERTI: That would have
5 to be in the statutes. We can ask our general
6 counsel to see if that's in the statute.

7 CHAIRPERSON MILLER: Okay. I
8 think that concludes our hearing.

9 MEMBER ALBERTI: I am not aware
10 that there's any such requirement in our
11 statutes.

12 CHAIRPERSON MILLER: Okay.

13 MEMBER ALBERTI: I mean we have
14 hearings. We have hearings that we sit down
15 and we get them to come. Well, in some ways,
16 they're not obligated to come. If they don't
17 come, there are consequences. In this case,
18 I don't know what the consequence for their
19 failure to come is. I don't believe there is
20 any legally assigned consequences for
21 nonappearance at a fact finding like this. I
22 may be wrong but that's --

1 CHAIRPERSON MILLER: I kind of
2 agree with you. I haven't seen where it's
3 written that they are. But, okay. We tried.

4 MEMBER RODRIGUEZ: How can you
5 have a policy to have fact finding without
6 some accountability somewhere? I don't
7 understand that. You know, I'll keep studying
8 this on my own and with legal counsel. But
9 there should be some type of accountability
10 factor --

11 CHAIRPERSON MILLER: Yes.

12 MEMBER RODRIGUEZ: -- in terms of
13 communication before the applicant and ABRA.

14 MR. GORDY: I wish I was rich. I
15 should be, but I'm not.

16 CHAIRPERSON MILLER: Yes. I think
17 we all agree that that's a good idea. But
18 we're just saying that we're not sure that
19 it's in the law really. But almost everybody
20 is showing up today. So, that's good. All
21 right. Thanks so much.

22 MR. GORDY: Thank you.

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[Whereupon, at 2:59 p.m., the fact
finding hearing was adjourned]

<hr/> A <hr/> able 4:15 above-entitled 1:16 ABRA 2:9 19:13 absolutely 14:3 16:5 accountability 19:6 19:9 actuality 14:6 addition 12:14 address 4:8 adjourned 20:3 adjudication 6:13 Administration 1:3 1:17 2:16 advised 4:10 afternoon 2:13 Agency 15:4 agree 19:2,17 Alberti 1:19 7:2,3 7:13 8:2,7,12,14 8:17,20 9:8,12,17 11:2,12 12:2 15:15,18 16:1,19 17:1,4,8,11 18:4,9 18:13 Alberti's 14:13 Alcohol 2:15 Alcoholic 1:3,17 allows 17:22 alternative 13:11 amount 2:8 answer 7:4,6 answers 9:22 apparently 7:14 appear 11:11 16:6 16:10 applicable 3:13 applicant 19:13 application 17:18 17:22 apply 14:15 appropriate 5:4 13:13 approximately 3:4 April 5:16	asking 7:14 assigned 18:20 attempted 5:9 Ave 1:8 avenue 2:5 12:16 aware 18:9 <hr/> B <hr/> back 6:7 basically 3:14 4:10 12:16 behooves 10:19 believe 18:19 Beverage 1:3,17 2:15 big 9:8 Board 1:3,17 9:1 11:11 13:21 14:5 16:4 17:18 18:1 bothered 14:14 BROOKS 1:20 business 4:16 14:1 <hr/> C <hr/> C 13:2 call 11:8,10 12:15 cancellation's 16:16 care 3:14 case 12:21 16:5 18:17 caveat 17:22 cetera 13:12 Chair 15:1 17:16 Chairman 1:19 CHAIRPERSON 2:3,17 3:18,22 4:2 4:4,17,21 5:6,14 5:17,20 6:1,6,10 6:15,19 7:1,18 9:7 9:10,16 10:1,9,15 11:1,9,17 12:7 13:18 14:17,20 15:2,12,17,21 16:17 17:3,10,13 18:7,12 19:1,11 19:16	Class 1:9 13:2 clear 15:5 closed 12:12 Columbia 1:1,16 come 11:13 16:7,8 18:15,16,17,19 coming 6:8 communication 6:11,14 7:19 13:10 19:13 community 14:1 Company 1:7 complicated 9:13 concludes 18:8 conduct 10:20 confirmed 17:5 consequence 18:18 consequences 18:3 18:17,20 consider 16:22 considered 16:16 consistent 10:17 contact 3:20 4:8,9 5:9,22 6:2 10:4 12:3,6,17,17 13:5 13:7,11,11,13,16 18:1 contacted 5:7,10 12:1 convened 1:16 conversation 8:1 corporate 3:7 4:11 correct 8:18 9:11 14:2 counsel 9:21 15:3 18:6 19:8 CR 1:9 3:15 current 11:4 <hr/> D <hr/> D.C 1:15 DCRA 7:7 11:5 decline 11:13 Definitively 6:4 determine 10:22 Development 1:7	different 15:10 direct 12:5 directly 12:15 discuss 16:15 District 1:1,16 doing 4:22 5:4 DONALD 1:20 <hr/> E <hr/> effort 10:3 email 4:7 5:19,20 12:8,16 employees 6:3 ensure 12:18 13:12 especially 14:12 establishments 12:12 et 13:11 everybody 19:19 exchange 7:22 express 6:11 extend 14:14,15 extended 1:8 2:7,20 extension 8:3,11 9:4 11:6 15:14 extensions 8:12,13 15:8 extent 6:14 <hr/> F <hr/> fact 1:7 2:4 16:8 17:15 18:21 19:5 20:2 factor 19:10 facts 2:22 failure 18:19 feedback 14:11 feels 18:2 fees 3:12 5:4 7:16 9:3 11:4,19,20,22 11:22 12:1,3,6 fellow 16:4 file 4:7 8:18 find 13:16 finding 1:7 2:4 16:8 17:15 18:21 19:5 20:3	first 3:21 4:5,6 Five 1:8 2:4 3:5 four 4:22 franchisee 3:5 frustration 16:13 <hr/> G <hr/> general 9:21 15:3,5 18:5 Georgetown 1:7 give 2:19 going 4:12 9:2 16:2 good 2:13 7:7 19:17 19:20 Gordy 2:9,13,14 3:2,20 4:1,3,6,19 5:2,8,15,19,21 6:4 6:9,12,18,22 7:6 7:10,17,21 8:5,10 8:13,15,19 10:14 12:3,5,8,14 13:8 14:3,6 15:11 16:20 19:14,22 gotten 17:14 GOVERNMENT 1:1 granted 17:20 guess 2:21 7:8 13:17 Guys 1:8 2:4 3:5 <hr/> H <hr/> hear 15:1 heard 7:15 15:8 hearing 1:8 2:4 5:7 6:8,11 16:6,10 18:8 20:3 hearings 18:14,14 HECTOR 1:21 HERMAN 1:20 hold 4:12,13 <hr/> I <hr/> idea 16:14 19:17 identify 13:10 illegal 16:20 individual 3:21 4:9
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10:4 13:1 inform 16:11 information 2:19 4:8 12:19 13:11 13:13 17:14,17 initially 13:5 interest 11:15,18 11:20 13:22 introduce 2:11 involves 2:6	3:9,9,19 12:9 14:7 14:9 16:16 17:19 18:1 licensees 13:14 licenses 5:11 10:18 11:5 13:2 14:1 15:10 licensing 2:14 4:11 5:10 6:3 13:9 LLC 1:7 7:6 located 2:5 long 2:21 look 8:21 9:1,19 10:21 11:3 16:2 lot 12:11	MIKE 1:21 MILLER 1:19 2:3 2:17 3:18,22 4:2,4 4:17,21 5:6,14,17 5:20 6:1,6,10,15 6:19 7:1,18 9:7,10 9:16 10:1,9,15 11:1,9,17 12:7 13:18 14:17,20 15:2,12,17,21 16:17 17:3,10,13 18:7,12 19:1,11 19:16 moratorium 9:11 15:8,10 morning 15:9	opinion 14:16 option 17:6 original 8:10	R R 1:7 R-O-N-A 4:3 reached 5:11,18 13:12 ready 2:10 real 17:6 really 19:19 reason 7:13 recommend 13:21 recommendation 14:5 15:1 16:14 record 2:11 8:15 records 10:21 referring 3:19 regs 9:19 Regulation 1:3,17 2:15 remind 16:4 remove 4:15 renewal 3:12 5:3 7:9,16,21 12:10 renewed 3:15,16 7:12 8:6 13:1,3 renewing 5:2 12:21 representing 3:8 request 8:8,10,22 9:4,6,14 10:2 11:5 15:7,13 requested 8:3,16 16:7 requirement 18:10 respect 6:8 response 6:7,20 13:6 14:22 responsibility 14:10 responsible 3:12 4:10 12:20 14:11 responsive 14:9 Restaurant 1:7 13:2 Ret 1:9 review 10:17 rich 19:14 right 5:14 7:9,10,10
J JAMES 1:22 JONES 1:20	M ma'am 6:9 Madam 17:16 mail 12:11 mailings 12:15 maintain 14:10 maintained 3:10 Manager 2:14 March 3:15 5:16 7:12,18 13:1 matter 1:6,16 mean 9:6 18:13 means 16:3 Member 1:19,20,20 1:21,21,22 7:3,13 8:2,7,12,14,17,20 9:8,12,17 10:7,11 10:16 11:2,7,10 11:12,14,21 12:2 12:4,13 13:4,15 13:20 14:4,19,21 15:15,18 16:1,12 16:19,21 17:1,4,7 17:8,11,16 18:4,9 18:13 19:4,12 members 7:2 16:4 method 5:22 methodologies 12:18 methods 13:10	N N.W 1:14 name 2:14 3:21 4:5 4:6 necessary 18:2 need 10:21 11:7,10 13:16 needs 9:1 NICK 1:19 nonappearance 18:21 Northwest 2:5 notice 16:15 notified 12:9 Number 2:6 NW 1:8	P P-R-O-C-E-E-D-... 2:1 p.m 1:16 2:2 20:2 paid 11:3,19,21,22 12:1,3,6 part 16:10,12 particularly 12:9 paying 5:3 11:19 12:21 payment 5:12 payments 3:12 pays 9:3 people 7:15 person 3:8,20 4:9 physically 7:22 place 12:11 placed 3:9 please 2:12 point 4:14 6:5 14:13 17:17 policy 9:3 10:17 19:5 posed 15:19 posing 9:21 possible 10:5,6 potential 17:19 pretty 3:16 probably 7:3,5 process 5:15 10:20 protected 14:8 provide 14:11 pull 4:7 pulled 3:6 4:12 purview 13:21 put 11:15	Q question 9:9,22 15:4,19,20 questions 7:2 quite 7:15
K keep 9:5 19:7 kept 14:16 kind 9:20 17:21 19:1 know 2:22 3:1 4:22 5:6,8,10,18 7:4,5 8:9 9:15 10:4,5,22 12:11 13:22 14:12 15:3,15,16 16:9 17:9,19,21 18:18 19:7 knowledge 6:16,20 8:1	L law 9:2,13 15:6 19:19 lawyer 15:20 16:1 left 3:17 legal 14:18 16:5,9 17:5 18:2 19:8 legally 18:20 letter 6:12,16,21 license 1:10 2:6,6 2:20 3:3,10,11,16 4:13,13,15 5:3,5 7:11 8:6 10:12 11:16 12:19 13:1 14:7,12,15,15,16 15:7 17:20 licensee 2:8,18 3:5	O obligated 9:5 18:16 obligation 14:18 15:6 16:6,9 okay 2:3,10,17 4:4 5:17 6:1,6,15,19 7:1 8:2 10:1,9,16 11:1,9,17 13:15 13:18 15:2 17:7 17:10 18:7,12 19:3 ones 12:10 operate 4:16	Q question 9:9,22 15:4,19,20 questions 7:2 quite 7:15	

7:17,17 8:20 15:21 19:21 Rodriguez 1:21 10:7,10,11,16 11:7,10,14,21 12:4,13 13:4,15 17:16 19:4,12 Rona 3:9,14,21 4:1 4:2 6:3,7 run 12:16 RUTHANNE 1:19	staff 17:5 standing 7:8 starting 2:21 status 14:8 statute 9:18 18:6 statutes 18:5,11 STREET 1:14 study 17:20 studying 19:7 submitted 17:18 Suite 1:14 sure 8:22 19:18	Verona 3:22 viable 13:13 vote 16:18	2000 1:14 20009 1:15 2010 3:4 4:18,20 2013 3:15 7:12,19 13:1 2014 1:13 5:16
<hr/> S <hr/>	<hr/> T <hr/>	<hr/> W <hr/>	<hr/> 3 <hr/>
safekeeping 1:9 2:7 2:20,22 3:3,10,11 4:14,15 5:12 8:4,8 8:22 9:4,5,14,15 10:13,18 12:10,20 14:8 15:7 saying 13:5 19:18 says 9:2 Sean 2:14 second 13:6 second/third-year 5:12 see 9:17 18:6 seen 19:2 send 16:15 sent 6:13,16 Short 1:22 13:19 13:20 14:4,19,21 16:12,21 17:7 showing 19:20 SILVERSTEIN 1:21 sir 8:1,19 12:13 13:8 sit 18:14 somebody 7:8 11:22 sorry 10:8 12:5 14:20 specialist 4:11 specialists 5:11 13:9 speculate 16:3	t/a 1:8 take 8:21 9:1 16:21 takes 12:10 talked 15:9 team 13:10 tell 6:5 terms 7:21 12:17 19:12 Thank 14:19,21 19:22 Thanks 19:21 thereabout 3:4 thing 11:18 think 8:21 9:1,20 15:18 16:12 17:13 18:8 19:16 three 4:22 Thursday 1:12 time 2:8 7:15,19 8:3,5,16 9:18 today 17:12 19:20 tried 19:3 type 19:9	waiting 7:5 Walker 5:9 want 9:15 wanted 4:13 wanting 12:17 Washington 1:15 wasn't 6:20 way 13:16 ways 18:15 we're 2:18 15:8 19:18,18 we've 5:10 15:9 17:13 when's 8:2 Wisconsin 1:8 2:5 wish 19:14 wondering 2:18 worked 13:9 wouldn't 16:17,19 written 19:3 wrong 18:22	<hr/> 4 <hr/>
			400S 1:14
			<hr/> 5 <hr/>
			<hr/> 6 <hr/>
			<hr/> 7 <hr/>
			71127 1:10 2:6
		<hr/> X <hr/>	
		<hr/> Y <hr/>	
		year 14:13 years 5:1	
		<hr/> Z <hr/>	
		zone 9:11 15:8 zones 15:10	
		<hr/> 0 <hr/>	
		<hr/> 1 <hr/>	
		1335 1:8 2:5 14TH 1:14 15 1:13	
		<hr/> 2 <hr/>	
		2:43 1:16 2:2 2:59 20:2	
	<hr/> U <hr/>		
	unanswered 15:19 understand 3:6 9:12 10:12 19:7 understanding 3:2 12:22 understands 14:7		
	<hr/> V <hr/>		